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SUBJECT : Soviets Attempt Fuller Explanation of Draft Moon Treaty

Summary. During UNGA First Committee consideration of outer space matters, the Soviets made a new effort to justify their draft Moon Treaty as adding concretely to existing outer space treaties. Judging from subsequent comments by other delegations in the Committee, they were successful to a modest degree. A number of delegations explicitly spoke of the need to establish further rules governing the handling and disposition of lunar materials. End Summary.

USSR Statement.

In his November 5 statement on the outer space item in the UNGA First Committee, USSR Ambassador Issraelyan made the most ambitious public attempt we have yet heard to demonstrate that the Soviet draft Moon Treaty would represent a significant advance beyond existing space law. Perhaps reacting to the American view, reiterated to the Soviet delegation a few days earlier, that we remain somewhat skeptical that the draft adds much to what is already provided in the Outer Space Treaty, Issraelyan went on at some length in seeking to identify specific new elements. He said:

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"... we were guided primarily by the idea that it (the draft) should develop and specify provisions which would be applicable to the specific circumstances of the moon and to the present stage of a conquest of the moon, (on) the basis (of) provisions and principles of international agreements on outer space already in existence, first and foremost the 1967 Treaty. The Soviet draft, first of all, contains a number of important new provisions. It contains new provisions concerning the prohibition of any military utilization of the moon and circumlunar space. The 1967 outer space Treaty said that outer space, including the moon, should be used only for peaceful purposes and forbade the placing in orbit around the earth of any objects with weapons of mass destruction, the installation of such weapons in outer space by any other means, placing military bases on celestial bodies, the conduct of military manoeuvres and the testing of any weapons. The provisions of the draft treaty proceeding from the new stage, the beginning conquest of the moon, go considerably further, forbidding on the moon any threat or use of force, any other hostile actions or threats of such actions and also the use of the moon to commit hostile actions in relation to the earth and space objects. That is in article I of the draft treaty.

In addition to the 1967 Treaty, there is a prohibition on placing in moon orbit or placing in the subsoil of the moon weapons of mass destruction. That is contained in article II of the Treaty. The draft treaty concerning the moon for the first time stipulates that activities on the moon shall be carried on, with due regard to the interests of present and future generations and with respect for the rights of all States, without exception, to explore and use the moon.

The draft contains a number of new norms prohibiting the appropriation in any manner whatsoever of parts of the lunar surface and subsoil and also any act aimed at such appropriation. By comparison with article II of the outer-space Treaty in which outer space, including the moon and other celestial bodies are declared as not being subject to national appropriation, the Soviet moon treaty says that the surface and the subsoil of the moon cannot be the property either of States or of international intergovernmental and

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non-governmental organizations, national organizations, bodies corporate or individuals. It is also stated that the moon cannot be the object of any transactions whose purpose is to acquire the right of ownership to part of the lunar surface or subsoil.

The draft proposed by the Soviet Union enshrines the right of States to carry out scientific activity on the moon freely, and to that end to install both manned and unmanned stations, to land their space objects on the moon, to launch them from the moon, to dispose their equipment and personnel there. The specific norms regulating the practical activity of States in their conquest of the moon have no analogy in already existing agreements on outer space.

Since activity on the moon involves increased danger for human beings, the provisions of the draft provide for the further development of legal norms requiring States to take all possible steps to preserve the life and health of man on the moon -- article VII of the draft -- and also to bear liability for any damage to the personnel or property of another State caused by their activity or the activity of their personnel on the moon. In particular, Article VII of the draft treaty includes a new paragraph -- paragraph 2 -- which states that:

> 'It shall be the duty of States Parties to offer shelter in their stations, vehicles, installations or other facilities to persons in distress on the Moon who are part of the personnel of other States parties'.

On the question of liability for space activity, article XI of the draft contains a basically new provision establishing, in addition to the norms contained in article VII of the outer-space Treaty, the liability of States not only for damage caused by their space objects but also for the activities of their personnel on the moon.

A number of provisions of already operating agreements concerning outer space are further concretized in the draft treaty concerning the moon."

Issraelyan added that the Moon Treaty might be a precursor of similar documents applicable to other celestial bodies:

"The conclusion of the treaty would foster the further development of international legal norms concerning the activities of States in the exploration of celestial bodies, would be in keeping with the interests of all countries great and small, developed and developing, and would open the way to further fruitful work in the field of law in the interest of all peoples. Such a treaty could serve as a basis for the development, when the time comes, of international legal instruments concerning the activities of man on other celestial bodies -- and that time is not so very far off."

He also ascribed a degree of priority to completion of the Moon Treaty, which had been rejected by the US and other delegations in negotiations on the Soviet draft resolution on the treaty:

"In the light of what I have said, we consider that the General Assembly should take a decision to instruct the United Nations Committee on the Peaceful Uses of Outer Space to give priority consideration to the question of preparing a draft international treaty concerning the moon with a view to submitting such draft to the twenty-seventh session of the General Assembly."

Other Statements.

Besides several Soviet bloc countries, India and Indonesia seemed to share the USSR's view regarding priority. The Indian delegate suggested:

"the various articles of the draft treaty concerning the moon should be carefully considered by the Governments of all countries, so consideration of that draft treaty could be included, if possible, in the agenda of the twenty-seventh session of the General Assembly."

The Indonesian representative stated that "the rules which govern man's activities on the moon should also be prepared as a matter of urgency." He also indicated satisfaction that the draft treaty had been "explained in detail by the Soviet representative." Others, Canada and Iran, for example, said that they found the Soviet explanation helpful.

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The explanation, however, apparently left some delegations unsatisfied with the draft treaty in varying degrees. Speaking "on a personal basis," the United States Delegate, Admiral Alan Shepard, said:

> "I have some doubt with regard to the contents and scope of the Soviet proposal. It seems to me personally that a significant number of the articles in the Soviet text, in their present form, either duplicate or restate with only slight variations certain rights and obligations which are already provided for in the outer space Treaty. Therefore, I strongly suggest that the Legal Sub-Committee may wish to bear this in mind when it considers the Soviet proposal and other proposals that have been made or may be made in this field."

The UK delegate made a similar remark:

> "As for the draft treaty itself, I am bound to say that in our preliminary study we have found rather few provisions which add substantially to, or do more than repeat, those already embodied in the two existing treaties relating to outer space. We nevertheless agree in principle that it might be useful to develop more specific rules with respect to the moon and consider that it would be appropriate for the Committee on the Peaceful Uses of Outer Space, when considering questions relating to the moon . . . to have the Soviet draft treaty before it, as also other drafts which have been or may be presented, such as the proposals put forward by Argentina."

Brazil made the strongest statement of doubt concerning the worth of the Soviet treaty:

> "With all respect, my delegation fails once again to detect any substantial progress in the draft treaty before us in relation to the general and comprehensive norms of, for instance, articles I, IV, V and IX of the outer space Treaty.
>
> There are in addition some important omissions in the Soviet draft. One of them is the fact that it does not deal with the question of the legal regime governing

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substances and natural resources of the moon. The Soviet draft also fails to recognize, in its article III, that the exploration of the moon, besides taking into consideration the interests of States, should be carried out for their benefit, as provided for in the corresponding article 1 of the outer space Treaty.

. . .

Those are just a few examples, but enough to characterize in broad terms what I would perhaps euphemistically call the 'timidity' of the Soviet draft treaty, or its unwillingness to advance new concepts involving further rights and obligations, both for space and non-space Powers."

Interestingly, Yugoslavia said:

"The draft treaty comprises a certain number of important and valid rules and principles, irrespective of the fact that most of them have already been adopted in one form or another, such as the use for exclusively peaceful purposes, the prohibition of national acquisition and so on."

The Yugoslav delegate also reflected a concern shared and stated, by many countries:

"The creation of new norms of international law and the establishment of new legal rules for activities in exploration of the moon and for international co-operation in its utilization in the interest of peace and for the benefit of all mankind is indispensable, and we shall support all steps towards this end ... My delegation is of the opinion that there is need for a closer examination of the provisions regarding the exploitation of the resources of the moon and it also strongly feels that these resources should be regarded as the common heritage of mankind and not subject to any form of appropriation."

India put forward this view even more strongly:

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"Regarding the resources of the moon, our view is that those resources must be regarded as the common heritage of mankind and not be subject to appropriation, by any party, by occupation or by extraction as property. There should, however, be freedom to use the moon for the purpose of further exploration of other planets and celestial bodies. My delegation is of the view that there is need for closer examination of the provisions regarding the exploitation of the resources of the moon ..."

Together with a number of other delegations, Brazil urged that the Outer Space Committee's Legal Subcommittee consider this issue on a broader basis than the Soviet draft:

"... it would be much more appropriate to discuss this subject according to the approach which was suggested by the delegations of Argentina and France at the last session of the Legal Sub-Committee; that is, to study the legal regime governing substances coming from the moon and from other celestial bodies. Curiously, not a word is included in the Soviet draft treaty about this problem, which concerns us all, and whose solution would be of universal interest."

The Argentine delegate left no doubt about his country's view of the relative importance of its initiative vis-a-vis that of the USSR, and its understanding that both had an equal status as regards priority in the Legal Subcommittee:

"... several delegations have recalled the draft treaty on principles governing activities utilizing the natural resources of the moon and other celestial bodies, submitted by the Argentinian delegation to the Legal Sub-Committee of the Committee on the Peaceful Uses of Outer Space at its ninth session. We agree with the views expressed by those delegations, namely, that that draft, together with the one submitted by the Soviet delegation and any future initiatives that may be taken on this item, will have to be considered elements of a single subject to be the object of legal regulations.

In conclusion, I should like to recall, as did the representative of France, that my delegation and his jointly submitted a proposal that was adopted by the

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Legal Sub-Committee advocating study of this item under the following headings: standards to govern human activities on the moon; questions relating to the legal regime applicable to materials from the moon and other celestial bodies, including the principles governing activities utilizing the natural resources of the moon and other celestial bodies. Later, the Committee decided to recommend priority for the study of these items, as is stated in paragraph 38 of the report on its last session, which we are now considering."

Comment.

These and similar statements before the First Committee indicate that the question of lunar resources is the primary concern of non-space powers.

BUSH

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